

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: March 25, 2015
Hearing Time: 10:00 AM

_____ x
In re:

Chapter 13

Gennaro Alaio and Elizabeth A. Alaio,

Case No.: 12-22220 (RDD)

Debtors.
_____ x

**OBJECTION BY NYS DEPARTMENT OF TAXATION AND FINANCE
TO DEBTORS' MOTION FOR AN ORDER LIMITING DISTRIBUTION TO NY AND
CONFIRMATION OF AMENDED PLAN**

Amanda Hiller, Deputy Commissioner and Counsel of the New York State Department of Taxation and Finance (the "Department") by Jacqueline Auerbach, District Tax Attorney, respectfully submits this objection to the Debtors' motion seeking confirmation of a modified amended plan omitting the responsible person sales tax portion of the Department's allowed claim from the Debtors' plan payment obligations (the "Motion"). For the reasons set forth below, the Department opposes confirmation of the proposed amended plan.

1. On February 5, 2012 the Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code.

2. The Department's amended claim number 2-5 is in the total amount of \$115,039.09, of which the secured and priority portions are to be paid in full (the "Claim") under the plan filed July 8, 2013, confirmed on September 16, 2013. See, Debtors' "Amended Plan to address amended tax claim", Document number 72 on the Court's Electronic Docket for this

case.

3. The Debtors' Motion now requests confirmation of an amended plan which omits payment of all sales tax portions of the Claim, leaving only the income tax portion of \$9,909.83.

4. The Department's records show that the claimed sales tax liabilities are assessed against Debtor Gennaro Alaio as a responsible person of Patricia's Pizza and Pasta II (the "Restaurant") which incurred the liabilities, (not Diamore Delicious Delights, Inc., as alleged in the Motion). Non debtor Giacomo Alaio, is also a responsible person of the Restaurant and as such was assessed for the sales taxes liabilities of the Restaurant pursuant to NY Tax Law §1133 which imposes joint and independent liability for sales taxes on responsible persons of an entity.

5. The Department agrees that Non Debtor Giacomo Alaio entered into a fifty-eight (58) month Installment Payment Agreement with the Department for the Restaurant's sales tax liabilities on January 21, 2014 (the "IPA") including statutory penalties and interest (which are not "fees") accruing until paid in full. If the IPA is paid in full, the claimed liabilities in the bankruptcy case will also be paid.

6. Pursuant to Bankruptcy Code Section 1329 (a), the Debtors are entitled to request a modification reducing payments on claims of a particular class or may alter payments to the extent necessary to take account of any payment of such claim outside the plan.

7. The Department is entitled to full payment of the sales taxes and interest by the Debtors pursuant to Code section 1322(a)(2) and (4). However, the Department would not oppose an amended plan referring to full payment Giacomo Alaio's IPA as outside payment

of the sales tax liabilities and a written waiver executed by Debtor, waiving discharge of the sales tax liabilities to the extent the IPA is either in default or not fully paid at the time of completion of the Debtors' plan.

WHEREFORE, the Department requests that the court deny approval of the proposed amended and such other relief as is just and proper.

Dated: Brooklyn, New York
February 10, 2015

Amanda Hiller
Deputy Commissioner and Counsel
NYS Department of Taxation & Finance
By: s/ Jacqueline Auerbach
District Tax Attorney
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Certification of Service

I hereby certify that the foregoing objection to the Motion to Limiting Distribution and the proposed Amended Plan was served on this 10th day of February 2015 via the Court's Electronic Filing System on those parties registered to receive notice in this case and additionally by U.S. Mail upon the following:

Panachio Malera LLP
Anne Penachio, Esq.
235 Main Street, Suite 610
White Plains, New York 10601

Jeffrey Sapir, Trustee
399 Knollwood Road, Suite 102
White Plains, New York 10603

Dated: Brooklyn, New York
February 10, 2015

Amanda Hiller
Deputy Commissioner and Counsel
NYS Department of Taxation and Finance
By: s/ Jacqueline Auerbach
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